

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Joint	)	Application No. NG-0044
Application of Aquila Inc.	)	
d/b/a Aquila Networks, Black	)	
Hills Corporation and Black	)	
Hills/Nebraska Gas Utility	)	
Company, LLC, Source Gas	)	ORDER ADOPTING
Holdings LLC for approval of	)	AMENDED PROTECTIVE ORDER
the proposed transfer of	)	
Aquila's certificate of	)	
convenience and for a change of	)	
control of Aquila's Nebraska	)	Entered: July 30, 2007
Jurisdictional assets.	)	

BY THE HEARING OFFICER:

AMENDED PROTECTIVE ORDER

1. This Amended Protective Order shall govern the use of all confidential information and documents produced by or on behalf of any of the Participants. This Amended Protective Order shall cover the confidentiality of any and all information and materials filed or otherwise involved in any and all future matters. This Amended Protective Order shall remain in effect until specifically modified or terminated by the Nebraska Public Service Commission.

2. In accordance with the procedures set forth in Rule 005 (Confidential Information) under Title 291, Chapter 9, Nebraska Administrative Code, a Participant may designate as protected those materials which customarily are treated by that Participant as sensitive and proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury.

In addition to the materials designated as "Confidential Material" under Paragraph 3(b)(1), there shall be an additional category of materials designated and marked as "Super

Confidential," which shall be made available pursuant to the terms of Paragraphs 7, 8, 9 and 10, except that these materials may be viewed only by the "Super Confidential Reviewing Representatives" authorized by the Commission to review "Super Confidential Materials" pursuant to paragraph 3(e) below.

3. Definitions -- For purposes of this Amended Protective Order:

(a) The term "Participants" shall mean Applicants Aquila, Inc., d/b/a Aquila Networks ("Aquila"), Black Hills Corporation ("Black Hills"), Black Hills/Nebraska Gas Utility Company, LLC ("BH Nebraska Gas"), and any other necessary or permitted party in the proceeding under the Joint Application for Approval of the Proposed Transfer of Aquila's Certificate of Convenience and for a Change of Control of Aquila's Nebraska Jurisdictional Assets (the "Application") in this Docket (each also hereinafter referred to as a "Participant").

(b) (1) The term "Confidential Material" means (i) materials (including depositions) provided by a Participant in the Application, workpapers, responses to discovery requests and other materials designated by such Participant as protected; (ii) any information contained in or obtained from such designated materials; (iii) any other materials which are made subject to this Amended Protective Order by the Commission or its staff, by any Court or other body having appropriate authority, or by agreement of the Participant; (iv) notes of Confidential Materials; and (e) copies of Confidential Materials. The Participant producing the Confidential Materials shall physically mark them on each page as "CONFIDENTIAL" or with words of similar import as long as the term "Confidential Materials" is included in that designation to indicate that they are Confidential Materials in accordance with the Commission's Rules and Regulations.

(1.1) The term "Super Confidential," means any materials of a highly sensitive or super sensitive nature which,

if disclosed by Applicants to either the general public or to other Intervenor in this proceeding, would cause it significant competitive harm. Super Confidential Material includes highly sensitive proprietary information from depositions, testimony, pleadings, discovery responses, notes of Super Confidential Materials, copies of Super Confidential Materials, exhibits, or other competitive information that is deemed Super Confidential by the Participant and produced by the Participant in this proceeding. Black Hills' business evaluation models of Aquila, which Black Hills generated during its research into the purchase of Aquila, are an example of material that requires this higher level of confidentiality because of the sensitive nature of the information. The Participant producing the Super Confidential Information shall physically mark them on each page as "SUPER CONFIDENTIAL MATERIALS" or with words of similar import as long as the term "SUPER CONFIDENTIAL" is included in that designation to indicate the highest degree of sensitivity of confidentiality attached to that specific information. The Participant must also file with the Commission and provide to all parties a general description of the Super Confidential Materials filed with the Commission so that the parties, subject to section 11, have a basis to protest the classification of material as Super Confidential.

(2) Confidential Materials shall not include (i) any information or document contained in the files of the Commission, any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court; or (ii) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Amended Protective Order.

(3) The term "Notes of Confidential Material" means memoranda, handwritten notes, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b). Notes of Confidential Materials are subject to the same restrictions provided in this Amended Protective Order for Confidential materials except as otherwise specifically provided herein.

(3.1) The term "Notes of Super Confidential Material" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b). Notes of Super Confidential Materials are subject to the same restrictions provided in this Amended Protective Order for Confidential Materials except as otherwise specifically provided herein.

(c) (1) The term "Non-Disclosure Certificate" shall mean the certificate attached hereto as Appendix A by which Participants who have been granted access to Confidential Materials shall certify their understanding that such access to Confidential Materials is provided pursuant to the terms and restrictions of this Amended Protective Order, and that such Participants have read the Amended Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Commission in this proceeding.

(2) The term "Super Confidential Non-Disclosure Certificate" shall mean the certificate attached hereto as Appendix B by which Participants who have been granted access to Super Confidential Materials shall certify their understanding that such access to Super Confidential Materials is provided pursuant to the terms and restrictions of this Amended Protective Order, and that such Participants have read the

Amended Protective Order and agree to be bound by it. All Super Confidential Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Commission in this proceeding.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Litigation Staff (i.e., Public Advocate);
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (2);
- (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, or testifying in this proceeding;
- (5) a person designated as a Reviewing Representative by order of a Presiding Judge or the Commission; or
- (6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

(e) The term "Super Confidential Reviewing Representative" shall mean a person who has signed a Super Confidential Non-Disclosure Certificate and who is:

- (1) The Public Advocate;
- (2) Authorized Commission staff and Commissioners; or

(3) An "Approved Person" as defined in 3(f).

(f) The term "Approved Person" shall refer to a Participant who has submitted a request to view Super Confidential Materials, and after the Commission has heard arguments from both sides, the Commission determines disclosure of such information to the Participant is critical to the Participant's defense of an issue of interest in this proceeding. The Commission may further limit, within reason, the Approved Person who may review such Super Confidential Materials.

Such Reviewing Representative shall not be an individual involved in (i) consulting, marketing, purchase, or sales of energy or the supervision of the consulting marketing purchasing or sales of energy if the information at issue is confidential and specific to another vendor or customer of Aquila, Black Hills or BH Nebraska Gas, or (ii) negotiating gas supply, transportation or sale arrangements with Aquila, Black Hills or BH Nebraska Gas if the information at issue is confidential and involves other Aquila, Black Hills or BH Nebraska Gas customers, suppliers, interstate transporters, shipping, or potential shippers' negotiations with Aquila, Black Hills or BH Nebraska Gas regarding capacity arrangements, (iii) negotiating with customers (current or potential) for service on, or certificate filings on behalf of entities competing with Aquila, Black Hills or BH Nebraska Gas if the information at issue is confidential and concerns potential expansion or extension of existing facilities of Aquila, Black Hills or BH Nebraska Gas or the renewal or renegotiation of existing service agreements of Aquila, Black Hills or BH Nebraska Gas or the negotiation of new service agreements of Aquila, Black Hills or BH Nebraska Gas or (iv) business development employees involved in the purchase or sale of business assets.

4. Confidential Materials shall be made available under the terms of this Amended Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7, 8, and 9 of this Amended Protective Order.

Super Confidential Materials shall be made available under the terms of this Amended Protective Order only to Super Confidential Reviewing Representatives as provided in Paragraphs 7, 8, and 9 of this Amended protective Order.

5. Confidential and Super Confidential Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Confidential and Super Confidential Material is concluded and is no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen (15) days of such request, return the Confidential and Super Confidential Materials (excluding Notes of Confidential and Super Confidential Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Confidential and Super Confidential Materials and Notes of Confidential and Super Confidential Material may be retained, if they are maintained in accordance with Paragraph 6 below. Within such time period each Participant, if requested to do, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Confidential and Super Confidential Materials and Notes of Confidential and Super Confidential Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6 of this Amended Protective Order. To the extent Confidential and Super

Confidential Materials are not returned or destroyed, they shall remain subject to the Amended Protective Order.

6. All Confidential Materials shall be maintained by Participants in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8 and 9 of this Amended Protective Order. The Commission shall place any Confidential Materials filed with the Commission in a non-public file in accordance with its Rules and Regulations. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities.

All Super Confidential Materials shall be maintained by the Super Confidential Reviewing Representatives in a secure place. Access to those materials shall be limited to those Super Confidential Reviewing Representatives specifically authorized pursuant to Paragraphs 8 and 9 of this Amended Protective Order. The Commission shall place any Super Confidential Materials filed with the Commission in a non-public file in accordance with its Rules and Regulations. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities.

7. Confidential Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9 below. Confidential Materials shall not be used except as necessary for the conduct of this proceeding,



nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding and who qualifies for access to such material pursuant to Paragraph 3(d) hereof. Reviewing Representatives may make copies of Confidential Materials, but such copies become Confidential Materials. Reviewing Representatives may make notes of Confidential Materials, which shall be treated as Notes of Confidential Materials if they disclose the contents of Confidential Materials.

Super Confidential Materials shall be treated as confidential by the Super Confidential Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9 below. Super Confidential Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Super Confidential Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding and who qualifies for access to such material pursuant to Paragraph 3(e) hereof. Super Confidential Reviewing Representatives may make copies of Super Confidential Materials, but such copies become Super Confidential Materials. Super Confidential Reviewing Representatives may make notes of Super Confidential Materials, which shall be treated as Notes of Super Confidential Materials if they disclose the contents of Super Confidential Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing, purchasing, or sale of energy, the direct supervision of any employee or employees whose duties include the marketing, purchasing, or sale of

energy, the provision of consulting services to any person whose duties include the marketing, purchasing, or sale of energy, or the direct supervision of any employee or employees whose duties include the marketing, purchasing, or sale of energy, such Reviewing Representative may not use information contained by any Confidential Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(d) above, the Participant shall seek agreement from the Participant providing the Confidential Materials. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Commission for resolution.

(c) If a Super Confidential Reviewing Representative's scope of employment includes the marketing, purchasing, or sale of energy, the direct supervision of any employee or employees whose duties include the marketing, purchasing, or sale of energy, the provision of consulting services to any person whose duties include the marketing, purchasing, or sale of energy, or the direct supervision of any employee or employees whose duties include the marketing, purchasing, or sale of energy, such Super Confidential Reviewing Representative may not use information contained by any Super Confidential Materials obtained through this proceeding, to give any Participant or any competitor of any Participant a commercial advantage.

(d) A Participant may not designate as a Super Confidential Reviewing Representative a person not described in Paragraph 3(e) above.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Confidential Materials pursuant to this Amended Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Confidential Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Amended Protective Order.

(c) A Super Confidential Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Super Confidential Materials pursuant to this Amended Protective Order unless that Super Confidential Reviewing Representative has first executed a Super Confidential Non-Disclosure Certificate provided that if an attorney qualified as a Super Confidential Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Super Confidential Non-Disclosure Certificate shall be provided to Counsel for the Participant asserting

confidentiality prior to disclosure of any Super Confidential Material to that Super Confidential Reviewing Representative.

10. Any Reviewing Representative may disclose Confidential Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate and the receiving Reviewing Representatives qualifies for access to that type of material under Paragraph 3(d). In the event that any Reviewing Representative to whom the Confidential Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position who occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Confidential Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Amended Protective Order and the certification.

A Super Confidential Reviewing Representative may only disclose Super Confidential Materials to another Super Confidential Reviewing Representative. Both the disclosing Super Confidential Reviewing Representative and the receiving Super Confidential Reviewing Representative must have executed a Super Confidential Non-Disclosure Certificate. In the event that any Super Confidential Reviewing Representative to whom the Super Confidential Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position who occupant is not qualified to be a Super Confidential Reviewing Representative under Paragraph 3(e), access to Super Confidential Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Super Confidential Non-Disclosure Certificate shall continue to be bound by the provisions of this Amended

Protective Order and the Super Confidential Non-Disclosure Certificate.

11. Subject to Paragraph 17 of this Amended Protective Order, the Commission or its designee shall resolve any disputes arising under this Amended Protective Order. Prior to presenting any dispute under this Amended Protective Order to the Commission or its designee, the parties to the dispute shall use their best efforts to resolve it. Any Participant that contests the designation of materials as protected shall notify the party that provided the Confidential or Super Confidential Materials by specifying in writing the materials whose designation is contested. In any challenge to the designation of materials as protected, the burden of proof shall be on the Participant designating the materials as Confidential or Super Confidential. After consideration of the criteria set forth in Neb. Rev. Stat. § 66-1829, if the Commission finds that the materials at issue are not entitled to protection, the procedures contained in Paragraph 17 herein shall apply.

12. (a) All copies of all documents reflecting Confidential Materials or Super Confidential Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Confidential Materials or Super Confidential Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Amended Protective Order. Such documents shall be marked "CONFIDENTIAL" or "SUPER CONFIDENTIAL" and shall be filed under seal and served under seal upon the Commission and all Reviewing Representatives OR Super Confidential Reviewing Representatives, as appropriate, who are on the service list in accordance with Commission Confidential Material Rules and Regulations. For any Confidential Materials filed under seal,

with redactions or where an entire document is protected, a letter indicating such will also be filed with the Commission and served on all parties on the service list. For any Super Confidential Material filed, a letter providing a general description of the Super Confidential Materials must be filed with the Commission and served on all parties on the service list. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives or Super Confidential Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Confidential Materials or Super Confidential Materials are not distributed to unauthorized persons.

(b) If any Participant desires to include, utilize or refer to any Confidential or Super Confidential Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than Reviewing Representatives or Super Reviewing Representatives, such Participant shall first notify both Counsel for the disclosing Participant and the Commission of such desire, identifying with particularity each of the Confidential or Super Confidential Materials. Thereafter, use of such Confidential or Super Confidential Material will be governed by procedures determined by the Commission in accordance with the provisions of its Rules and Regulations.

13. Nothing in this Amended Protective Order shall be construed as precluding any Participant from objecting to the use of Confidential or Super Confidential Materials on any legal grounds.

14. Nothing in this Amended Protective Order shall preclude any Participant from requesting the Commission, or any

other body having appropriate authority, to find that this Amended Protective Order should not apply to all or any materials previously designated as Confidential or Super Confidential Materials pursuant to this Amended Protective Order. The Commission may alter or amend this Amended Protective Order as circumstances warrant at any time during the course of this proceeding.

15. Each party governed by this Amended Protective Order has the right to seek changes in it as appropriate from the Hearing Officer or Commission.

16. All Confidential or Super Confidential Materials filed with the Commission or any other judicial or administrative body in support of or as a part of a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Confidential or Super Confidential Materials subject to this Amended Protective Order.

17. If the Commission finds at any time in the course of this proceeding that all or part of the Confidential or Super Confidential Materials need not be protected, those materials shall nevertheless be subject to the protection afforded by this Amended Protective Order for five business days from the date of issuance of the Commission's decision, and if the Participant seeking protection files an interlocutory appeal, for an additional seven business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Commission's decisions with respect to Confidential Materials, Super Confidential Materials, Reviewing Representatives, Super Confidential Reviewing Representatives, or the Commission's denial of any appeal thereof.

18. Nothing in this Amended Protective Order shall be deemed to preclude any Participant from independently seeking

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. NG-0044

Page 16

through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Amended Protective Order.

19. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Confidential or Super Confidential Materials.

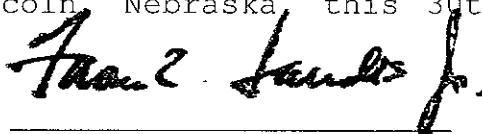
20. The contents of Confidential or Super Confidential Materials or any other form of information that copies or disclose Confidential or Super Confidential Materials shall not be disclosed to anyone other than in accordance with this Amended Protective Order and shall be used only in connection with these proceedings.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission in the above-captioned matter that this Amended Protective Order be adopted.

MADE AND ENTERED at Lincoln, Nebraska, this 30th day of July, 2007.

By:



Frank E. Landis  
Hearing Officer



APPENDIX A

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Joint                    ) Application No. NG-0044  
Application of Aquila Inc.                    )  
d/b/a Aquila Networks, Black                )  
Hills Corporation and Black                 )  
Hills/Nebraska Gas Utility                  )  
Company, LLC, Source Gas                    )  
Holdings LLC for approval of                )  
the proposed transfer of                    )  
Aquila's certificate of                       )  
convenience and for a change of             )  
control of Aquila's Nebraska                )  
Jurisdictional assets.                       )

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Confidential Material is provided to me pursuant to the terms and restrictions of the Amended Protective Order in this proceeding, that I have been given a copy of and have read the Amended Protective Order, and that I agree to be bound by it. I understand that the contents of the Confidential Materials, any notes or other memoranda, or any other form of information that copies or discloses Confidential Materials shall not be disclosed to anyone other than in accordance with that Amended Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Nebraska Public Service Commission.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Date: \_\_\_\_\_

Appendix B

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Joint ) Application No. NG-0044  
 Application of Aquila Inc. )  
 d/b/a Aquila Networks, Black )  
 Hills Corporation and Black )  
 Hills/Nebraska Gas Utility )  
 Company, LLC, Source Gas )  
 Holdings LLC for approval of )  
 the proposed transfer of )  
 Aquila's certificate of )  
 convenience and for a change of )  
 control of Aquila's Nebraska )  
 Jurisdictional assets. )

SUPER CONFIDENTIAL NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Super Confidential Material is provided to me pursuant to the terms and restrictions of the Amended Protective Order in this proceeding, that I have been given a copy of and have read the Amended Protective Order, and that I agree to be bound by it. I understand that the contents of the Super Confidential Materials, any notes or other memoranda, or any other form of information that copies or discloses Super Confidential Materials shall not be disclosed to, anyone other than in accordance with that Amended Protective Order. I acknowledge that a-violation of this certificate constitutes a violation of an order of the Nebraska Public Service Commission.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Date: \_\_\_\_\_